

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15121
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On August 22, 2000, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1995 in the total amount of \$2,280.

On October 13, 2000, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to submit additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) found that the taxpayer received wages in 1995 that were reported to the Idaho Department of Labor. The Bureau also found that the taxpayer had not filed an Idaho income tax return for 1995. The Bureau sent the taxpayer a letter asking about his filing requirement for 1995. The taxpayer responded stating that he had filed his return for 1995. The Bureau continued its correspondence with the taxpayer saying the Tax Commission had no record of receiving his 1995 return. The taxpayer did not follow-up with the Bureau's correspondence, so the Bureau prepared a return for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating that he lived and worked in Nevada for part of 1995. The taxpayer provided a W-2 statement as evidence that he was in Nevada. The Bureau reviewed the information and determined the taxpayer should have reported his Idaho income on a part-year resident form. The Bureau revised the Notice of

Deficiency Determination and sent a copy to the taxpayer. The taxpayer did not accept the Bureau's revised figures due to the fact that he had two earlier years returns for which he was entitled refunds. The Tax Commission would not allow the refunds because the returns were submitted beyond the statute for issuing refunds.

The Bureau referred the matter to the legal department as the taxpayer requested. The legal department reviewed the case and recommended the Bureau look into the domicile of the taxpayer. The Bureau then sent the taxpayer a letter canceling the Notice of Deficiency Determination and sent the taxpayer a domicile questionnaire. After receiving the domicile questionnaire, the taxpayer contacted the Bureau and questioned why the additional information was needed. The taxpayer thought the cancelled Notice of Deficiency Determination resolved the matter. The Bureau explained the purpose of the domicile questionnaire and the reason the Notice of Deficiency Determination was cancelled. The taxpayer agreed to fill out the questionnaire and return it to the Bureau.

The Bureau did not receive the questionnaire, so it prepared another return for the taxpayer showing that the taxpayer was domiciled in Idaho for the entire year of 1995. The Bureau sent the taxpayer another Notice of Deficiency Determination, which the taxpayer protested. The taxpayer stated he did not live in Idaho during this time and he provided a copy of the letter cancelling the Notice of Deficiency Determination.

The Tax Commission sent the taxpayer a letter setting forth two alternative methods for redetermining the Notice of Deficiency Determination. The taxpayer responded saying he wanted to provide additional information but did not know what information to present. The Tax Commission responded that he should provide information that would show where his domicile was during the time in question.

The taxpayer responded with the following information. In August 1995, the taxpayer acquired a Nevada driver's license. He was not registered to vote in either Idaho or Nevada. He did not fish or hunt. The taxpayer lived in a house in [Redacted], Nevada and did not own a home in Idaho. The taxpayer took everything he owned to Nevada in 1995 leaving nothing in Idaho.

The taxpayer went to Nevada to find quick employment. He also had personal reasons because he was born there and some of his family still lived in Nevada. The taxpayer found permanent employment at a gold mine in the area as a heavy equipment operator. When the taxpayer was not working he visited friends and family. The taxpayer stated he never came back to Idaho during the period in question.

The Tax Commission looked at the information the taxpayer provided and compared it with the available information gathered by the Bureau. The Tax Commission's analysis showed the information heavily favored the taxpayer abandoning Idaho in 1995. However, the taxpayer was still a part-year resident of Idaho in 1995 and he did receive wages and unemployment compensation from Idaho sources. Therefore, the taxpayer was required to file an Idaho income tax return for 1995.

The original Notice of Deficiency Determination the Bureau sent to the taxpayer was calculated as a part-year resident of Idaho. The Tax Commission reviewed that return and found that it was an accurate representation of the taxpayer's Idaho taxable income for 1995.

In the taxpayer's original protest, the taxpayer wanted the Bureau to give him credit for the refunds due him on his 1993 and 1994 Idaho income tax returns. However, Idaho Code section 63-3035(e) states that a taxpayer must file a claim for refund or credit within three years of the due date of the return required by the Idaho income tax act. The due date for the

taxpayer's 1994 return was April 15, 1995. The three-year statute of limitations expired on April 15, 1998. As of the date of this decision, the taxpayer had not filed his 1993 or 1994 Idaho income tax returns. Therefore, the Tax Commission cannot allow a credit from the 1993 and 1994 tax years against the taxpayer's tax liability for tax year 1995.

The taxpayer asked for consideration of the interest and penalty added to his 1995 tax. Idaho Code section 63-3045 states that interest shall apply to deficiencies in tax and refunds of tax. It further states that interest shall be assessed at the same time as the deficiency and shall be due and payable upon demand from the State Tax Commission. Furthermore, the Idaho Supreme Court stated in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), "We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory." Therefore, the Tax Commission has no discretion in adding interest to the tax deficiency.

With regard to the penalty, Idaho Code section 63-3046(c) states that, in the event a return required by the Idaho income tax act is not filed, a penalty of 5% per month to a maximum of 25% may be collected on such returns. The taxpayer asked the Tax Commission to consider his past filing history and the fact he could not get his refunds for 1993 and 1994 in determining whether the penalty should be added. The Tax Commission decided that, due to the circumstances surrounding this case, the penalty should be waived.

WHEREFORE, the Notice of Deficiency Determination dated August 22, 2000, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax,
penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$459	\$0	\$216	\$675

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this
decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the
within and foregoing DECISION was served by sending the same by United States mail, postage
prepaid, in an envelope addressed to:

[REDACTED] Receipt No. [Redacted]
[Redacted] [REDACTED]

ADMINISTRATIVE ASSISTANT 1